IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4413 OF 2005

Ritesh Ashok Relekar ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Pratap Patil for the Applicant
Ms S.D.Shinde,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 9,2005

P.C.:

1. On 24th July 2005 this Application was adjourned on 26th July 2005. On 26th July 2005 the learned A.P.P. sought time on the ground that the Investigating Officer was not present. Accordingly, by passing a specific order, time was granted as a last chance till 1st August 2005. This Court directed the concerned Officer to file Affidavit explaining the reasons for his absence. This Court made it very clear that even if the concerned Officer was not present, the Application will be decided in his absence.

2. Due to difficulties created by unprecedented rain in Mumbai, the Application was not placed on board on 1st August 2005. The Application was placed on board on 4th August 2005. On that day on the request made by the learned A.P.P., time was granted till today. Today the investigating officer is not present. No Affidavit is filed in compliance with the order dated 26th July 2005. The learned A.P.P. states that

wireless messages have been sent by the office of Police Prosecutor to the concerned Investigating Officer on 13th July 2005, 21st July 2005, 25th July 2005, 3rd August 2005 and 8th August 2005 calling upon the Investigating Officer to remain present.

3. In view of the order dated 26th July 2005, I have taken up the application for hearing in absence of the Investigating Officer.

4. An offence has been registered against the Applicant and the other co-accused under Sections 307, 353 read with Section 34 of the I.P.C. and under Sections 3,25 and 27 of the Arms Act.

5. The learned Additional Sessions Judge rejected the application for bail filed by the Applicant. The order discloses that the investigation of the case has been completed and the charge sheet has been filed. By order dated 29th June 2005 the learned Additional Sessions Judge rejected the Application of the Applicant and the Application for bail made by the accused No.2 was granted. The ground on which the application for bail is rejected is that a knife was seized from the possession of the Applicant which is a dangerous and deadly weapon. The learned Judge also observed that the Applicant was injured in firing at the time of incident which

positively shows his presence on the spot and his participation and involvement in the course of counter attack or counter attack of police. The offence has been registered on the basis of F.I.R. filed by the Sub Divisional Police Officer, Islampur. It is stated in the F.I.R. that one Shahnavaz Sheikh who was arrested informed the police that Ravi Patil and others have assembled for the purposes of dacoity at a particular place. The Police Parties went to the said place for arresting the accused. The F.I.R. discloses that the accused persons fired against the police and in self defence the first informant opened fired by using his service revolver. The Applicant was injured in the firing. Perusal of the F.I.R. shows that no specific role is ascribed to the Applicant regarding use of fire arms against the police and no allegation has been made against him regarding possession of fire arms.

6. There is nothing on record to show that the applicant has assaulted anyone by using a knife which was allegedly found in his possession. There is nothing on record to show that any specific role is played by the Applicant in the offence. I had no option but to decide the Application on the basis of available material on record as the Investigating Officer has not co-operated with the A.P.P. As investigation is completed long back and charge sheet has been filed, the Applicant is entitled to be enlarged on bail on stringent conditions.

7. Hence I pass the following order : i) The Applicant shall be enlarged on bail in connection with C.R.No.48 of 2005 registered with Ashta Police Station, District Sangli subject to furnishing a personal bond of Rs.15,000/ (Rupees fifteen thousand only) with one or two local sureties in the like amount.

ii) The bail is granted subject to the condition that the Applicant will not enter the area falling within the jurisdiction of Ashta Police station, District Sangli till the conclusion of the trial.

iii) The bail is granted subject to the condition that the Applicant will report to the local police station once in a week till the conclusion of the trial.

iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

v) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

. Though the application for bail is disposed of, the District Superintendent of Police, Sangli will look into the matter and will file Affidavit setting out the reasons why the Investigating Officer did not report to the concerned Police Prosecutor. If the Officer found to be negligent, necessary action will be taken against the said Officer. Affidavit and compliance report to be filed on or before 19th August 2005. Place this Application for direction on 19th August 2005.

. The parties to act upon an authenticated copy of this order.

JUDGE